IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14053 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF THE DECEASED GOSAI KODARBHAI SHANKARGHAT

Versus

JT.SPL.SECRETARY

Appearance:

1. Special Civil Application No. 14053 of 2003

MR PN BAVISHI for Petitioner No. 1-2

MR KUNJAL PANDYA, AGP for Respondent No. 1-4

NOTICE NOT RECD BACK for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/08/2004

ORAL JUDGEMENT

Mr.Kunjal Pandya, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the

parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals) dated 30.6.2003/20.7.2003 passed in Revision Application No.1 of 2003 in dismissing the same on the ground of delay only.

3. The petitioners were the owners of land bearing S.Nos.186/4, 118 paiki, 149/5, 184/4 and 186/2. It seems that some loan was taken from Sathambha Group Co.op. Society for the purpose of agriculture and a sum of Rs.287/- was due and payable and the recovery proceedings were initiated and the Special Recovery Officer, Cooperative Societies, District Sabarkantha by its order dated 26.3.1998 passed an order confiscating the land in question to the State Government. It is the case of the petitioners that they were not aware about the same and for a meagre amount of Rs.287/-, they could not have foregone their valuable land value which comes to more than one lac. It is further the case of the petitioners that the moment they came to know about the same, they have already deposited and paid the amount which was due and payable to the society on 9.5.1998. However, subsequently when they came to know about the auction which took place behind their back, they have preferred revision application before the State Government. The State Government dismissed the said revision application on the ground of limitation without considering the cause for delay and without discussing the same and without coming to a specific finding whether there were justifiable reasons or not. It seems that the Secretary (Appeals) has not considered even the merits of the case also. As held by the Honourable Supreme Court in AIR 1998 SC Page 3222, the delay was required to be condoned by the Secretary (Appeals), more particularly, in view of the fact that the petitioners have a good meritorious case and there are all the chances of succeeding in the revision application, more particularly, considering the fact that for a meagre amount of Rs.287/- only, the valuable land of the petitioner worth more than Rs.1 lakh is auctioned, taken over and confiscated to the State Government. Considering the aforesaid facts and circumstances of the case, the Learned Secretary ought to have condoned the delay and ought to have heard the revision on merits. Unfortunately, the Secretary (Appeals) for technical ground of delay has rejected the application without considering the case of the petitioner on merits. Under the circumstances, the order passed by the Secretary (Appeals) dated

30.6.2003/20.7.2003 passed in Revision Application No.1 of 2003 in dismissing the same on the ground of delay requires to be quashed and set aside and is accordingly quashed and set aside. The Revision Authority i.e. Secretary (Appeals) is directed to decide and dispose of Revision Application No.1 of 2003 on merits within a period of three months from the ate of receipt of this order without in any way, being influenced by the fact that earlier the revision application was dismissed on the ground of limitation. Until the revision application is decided, the parties are directed to maintain status quo. Rule is made absolute with no order as to costs.

(M.R.Shah, J)

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